
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-05-NF-001
)	
Pembroke Square Associates)	NAL/Acct. No.200532640002
Owner of Two-Way Radio System, Pembroke Mall)	
Virginia Beach, VA)	FRN 0002031011
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 16, 2005

By the Resident Agent, Norfolk Resident Agent Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find Pembroke Square Associates ("Pembroke"), apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended ("Act").¹ Specifically, we find Pembroke apparently liable for operating a radio transmitter without a license.

II. BACKGROUND

2. On January 3, 2005, Commission headquarters forwarded a complaint to the Commission's Norfolk Resident Agent Office of the Enforcement Bureau ("Norfolk Office") regarding unlicensed operation in the General Mobile Radio Service ("GMRS") by housekeeping personnel in the Pembroke Mall in Virginia Beach, Virginia.

3. On January 12 and 13, 2005, a Commission agent from the Norfolk Office monitored and visually observed Pembroke Mall housekeeping personnel transmitting on GMRS frequency 462.625 MHz, using handheld two-way radio transmitters.

4. On January 13, 2005, a Commission agent conducted an inspection to determine the license status of the transmitters operating on the GMRS frequency in the Pembroke Mall. Pembroke authorities admitted operation of the two-way radio transmitters on 462.625 MHz. Pembroke provided the agent with Private Land Mobile Radio (PLMR) station license KB77434 and a Notice of Cancellation that cancelled station license KB77434 on June 10, 2004. Pembroke claimed to have received oral authorization from the Commission's Wireless Telecommunications Bureau staff to continue operation after cancellation of its license. Station license KB77434, however, did not include 462.625 MHz, the GMRS frequency upon which the agent observed Pembroke operating.

5. On January 14, 2005, the Commission's database contained no record of any

¹47 U.S.C. § 301.

authorization that permitted Pembroke to transmit on 462.626 MHz. On February 2, 2005, Wireless Telecommunications Bureau staff confirmed that Pembroke had not received oral authorization to continue operating under station license KB77434 after its cancellation.²

III. DISCUSSION

6. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.³ On January 12 and 13, 2005, a Commission agent monitored and visually observed Pembroke's personnel operating radio transmitters on the GMRS frequency 462.625 MHz. Pembroke admitted operation of the transmitters and provided the agent with station license KB77434 as its authority to operate the transmitters. Station license KB77434, a PLMR license, did not include the GMRS frequency 462.625 MHz and was cancelled on June 10, 2004.⁴

7. Based on the evidence before us, we find Pembroke willfully⁵ and repeatedly⁶ violated Section 301 of the Act by operating two-way radio transmitters on GMRS frequency 465.625 MHz without a license.

8. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules⁷, the base forfeiture amount for operation without an instrument of authorization is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Considering the entire record and

²Pursuant to Section 1.931(b)(5) of the Commission's Rules, licensees of Private Wireless Services may request special temporary authority to operate via the telephone under special limited circumstances, provided a properly signed application is filed within 10 days of such oral request. 47 C.F.R. § 1.931(b)(5). Even if Pembroke requested such authority, Pembroke did not submit a written application to operate pursuant to station license KB77434 after its expiration.

³47 U.S.C. § 301. *See also* 47 C.F.R. § 95.3 (GMRS license required for GMRS operation).

⁴The Wireless Telecommunications Bureau staff granted Pembroke an oral 10-day special temporary authority ("STA") to operate on the PLMR frequencies listed on station license KB77434 between January 14 and January 24, 2005. This STA, however, did not include GMRS frequency 462.625 MHz and did not cover any period of time prior to January 14, 2005.

⁵Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁶The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁷12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

⁸47 U.S.C. § 503(b) (2) (D).

applying the factors listed above, the case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁹ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,¹⁰ Pembroke Square Associates is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for repeated violation of Section 301 of the Act by operating a radio transmitter without a license.

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules,¹¹ within thirty days of the release date of this *NAL*, Pembroke, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, and P.O. Box 73482, Chicago, IL 60673-7482. Payment by wire transfer may be to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment should note the *NAL*/Acct. No. 2 200532640001 and FRN 0002031011. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, 1457 Mount Pleasant Rd., Suite 113, Chesapeake, Virginia 23322 within thirty days of the release date of this *NAL*, and **MUST INCLUDE** the *NAL*/and FRN referenced in the letterhead above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Pembroke Square Associates at its record of address.

⁹47 U.S.C. § 503(b).

¹⁰47 C.F.R. §§ 0.111, 0.311, 1.80.

¹¹47 C.F.R. § 1.80

¹²See 47 C.F.R. § 1.1914.

FEDERAL COMMUNICATIONS COMMISSION

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